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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,620	01/30/2002	Kenneth Carter	5157	3428
23512	7590	06/04/2004	EXAMINER	
EDWARD A SOKOLSKI 3868 CARSON STREET, 105 TORRANCE, CA 90503			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,620

Applicant(s)

CARTER, KENNETH

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6 and 7 is/are rejected.
- 7) ☒ Claim(s) 1, 3, 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Response to Amendment***

1. The Declaration, presumably under 37 CFR 1.132, filed December 4, 2003 is insufficient to overcome the rejection of claims 1, 2 and 4-6 based upon *Danylieko* in view of *Snyderman et al.* as set forth in the last Office action because: Affiant describes Exhibits "A" and "B" as showing pivots angled 35 degrees from the machine centerline, but the claims and the specification do not have limitations describing the pivots as being angled 35 degrees relative to the centerline of the machine. The specification and the claims describe the lever arms as running outwardly from each other at an angle of about 35 degrees or, as now amended, extending outwardly away from each other at an angle of about 35 degrees between each arm and the longitudinal axis of the upper central portion. Nowhere in the specification as originally filed, is it stated that the pivots are angled at 35 degrees relative to the machine centerline. It is also unclear what part of the pivot affiant is arguing since it is unclear whether affiant is referring to the pivot axis of each pivot or some other structure. In looking at the drawings, the unidentified pivots are shown with their pivot axes at some unidentified angle relative to the frame 14.

It include(s) statements which amount to an affirmation that the claimed subject matter functions as it was intended to function. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Specification

2. The disclosure is objected to because of the following informalities:

in the amendment to the last paragraph on page 5, line 2, "by" presumably should be deleted; and

in the amendment to the last paragraph on page 5, line 3, "brackets" presumably should be deleted.

Appropriate correction is required.

Claim Objections

3. Claims 1, 3, 6 and 7 are objected to because of the following informalities:

in claim 1, line 2, "A" presumably should be changed to --a--;

in claim 1, line 3, one of the extra semi-colons ";" presumably should be deleted;

in claim 1, line 4, the last occurrence of "said" presumably should be deleted;

in claim 1, lines 11 and 17, each occurrence of "levers" presumably should be deleted;

in claim 3, line 2, "lengths" presumably should be deleted;

in claim 6, line 1, "machines" presumably should be replaced with --machine--;

in claim 6, line 2, "brackets" presumably should be deleted; and

in claim 7, line 2, "length" presumably should be changed to --position--. Appropriate correction is required.

Claim Rejections - 35 USC § 102 and 103

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 6 and 7 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Voris* (US Pat. 6,471,624 B1). *Voris* discloses a support frame 10 having a base 13 and side portions 12, and a central upper portion 50 running normal to the base portion 13; a seat portion 90 pivotally mounted on the support frame; a back rest portion 92 hinged 70 to the seat portion; a calibrated adjustment lever 82 for setting the seat portion at one of a plurality of preselected positions at different distances from the base portion of the support frame; the end of the back rest portion connected to the seat portion to move along with the seat portion to bring the back rest portion towards a vertical position; a pair of opposing lever arms 30 connected together at one end thereof, the lever arms having supports 51 thereon for supporting weights 52; pivotal supporting means 68,70 (Figs. 14 and 15) pivotally support the lever arms on the central upper portion of the

support frame on opposite sides of the central support portion with each of the lever arms angled away from the longitudinal axis of the central upper support portion at an angle of approximately 35 degrees; and handles 36 mounted on the other ends of the lever arms for use in grasping the lever arms. The handles are removably mounted on the lever arms and permit selective positioning relative to the lever arms, and axially positionable in at least one of two positions, including 180 degrees apart. The lever arms are connected by means of a swivel bracket assembly 68,70.

Voris does not disclose in detail that the lever arms 30 angle away from a longitudinal axis of the central upper portion at an angle of approximately 35 degrees, but a review of the drawings indicates that the lever arms 30 of *Voris* have at least the mid-portions angled away from the longitudinal axis of the central upper portion at an angle of approximately 35 degrees. This would satisfy the limitations of amended claim 1.

7. Claims 1, 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Danylieko* (US Pat. 5,098,361) in view of *Snyderman et al.* (US Pat. 5,069,447). *Danylieko* discloses an exercise machine comprising a support frame 20 having a base 32,36 and side portions 22,26, and a central upper portion 14,24 running normal to the base portion 32,36; a pair of opposing lever arms 12,16 connected together at one end thereof, the lever arms having supports thereon for supporting weights *W*; and a swivel bracket assembly 52,56 pivotally supporting the lever arms on the central support portion 14 of the support frame on opposite sides of the central support portion 14 with each of the lever arms angled away from the longitudinal axis of the central upper portion at an angle of approximately 35 degrees; and

handles 62 mounted on the other ends of the lever arms for use in grasping the lever arms.

Weight saddles 43,47 are height adjustable for selectively adjusting the positions of the lever arms above the base portion of the support frame.

Danylieko does not disclose in detail the lever arms 12,16 angled away from a longitudinal axis of the central upper portion at an angle of approximately 35 degrees, but a review of the drawings indicates that the lever arms 12,16 have at least the mid-portions angled away from the longitudinal axis of the central upper portion at an angle of approximately 35 degrees. This would satisfy the limitation that the lever arms are angled away from the longitudinal axis of the central upper portion at an angle of approximately 35 degrees.

Danylieko does not disclose a seat portion pivotally mounted on the support frame (claim 1); a back rest portion hinged to the seat portion (claim 1); a calibrated adjustment lever for setting the seat portion at one of a plurality of pre-selected positions at different distances from the base portion of the support frame (claim 1); and the end of the back rest portion connected to the seat portion moving along with the seat portion to bring the back rest portion towards a vertical position (claim 1).

Snyderman et al. discloses a weight bench comprising a seat portion 110 pivotally mounted on a support frame having a base 22 and side portions 28; a back rest portion 108 is hinged 104 to the seat portion; a calibrated adjustment lever 94 for setting the seat portion at one of a plurality of pre-selected positions at different distances from the base portion of the support frame; and the end of the back rest portion connected to the seat portion moving along with the seat portion to bring the back rest portion towards a vertical position. Weight saddles

42 are adjustable also. The adjustability of the seat and back rest portions allows a user to perform various exercises, such as the bench press and the inclined press exercises.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise machine of *Danylieko* with the adjustable weight bench of *Snyderman et al.*, in order to position a user's body in a variety of positions to perform a variety of exercises on a single user support.

Response to Arguments

8. Applicant's arguments filed December 4, 2003 have been fully considered but they are not persuasive and moot in view of the new ground(s) of rejection.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "angling the two pivots relative to each other at about 35 degrees") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Each of the lever arms of *Voris* and *Danylieko* are angled away from a longitudinal axis of a central upper portion at an angle of approximately 35 degrees. Applicant further argues certain arcuate movements of the lever arms, but such movements are not recited in the claims. Insertion of such limitations will not necessarily result in the allowance of the claims, since it is known to the Examiner that various exercise machines have such lever arm movements, such as the patents to *Jones*, *Simonson*, and *Ellis et al.* to name a few.

With regard to Applicant's declaration that the angling of the lever arms at about 35 degrees radically improves operation, the declaration mainly refers only to the details not found in the individual claims of the application or in the specification as filed. Also, the prior art made of record have lever arm movements as those shown in Exhibits "A" and "B".

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jones (US Pat. 5,044,631), *Jones* (US Pat. 5,044,632), *Jones* (US Pat. 5,181,896), *Simonson* (US Pat. 5,667,464), *Simonson* (US Pat. 5,788,614) and *Ellis et al.* (US Pat. 5,810,701) disclose exercise machines have relevant lever arms.

Isom et al. (US Pat. 6,287,243 B1) discloses a bench satisfying Applicant's claim limitations for a bench and would be obvious to use with the exercise machine of *Danylieko*.

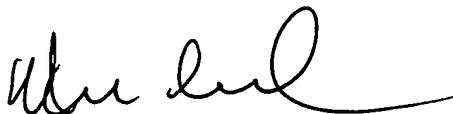
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to

37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting all formal correspondence is (703) 872-9306.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Victor K. Hwang
May 24, 2004